No. 12922

# United States
# COURT OF APPEALS
## for the Ninth Circuit

WILLIAM C. McINDOE,
*Appellant,*

vs.

UNITED STATES OF AMERICA,
*Appellee.*

## APPELLANT'S BRIEF

Appeal from United States District Court for the District of Oregon.


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## STATEMENT OF JURISDICTION

This action against the United States is authorized under the "National Service Life Insurance Act of 1940", U.S.C. 1946 ed., Title 38, Sec. 817, Oct. 8, 1940, ch. 757, Title VI, Part I, Sec. 616, 54 Stat. 1014; Aug. 1, 1946, ch. 728, Sec. 13, 60 Stat. 788, Title 38 U.S.C.A. Sec. 817, making applicable to National Service Life In-

surance of WW II the laws applicable to United States Government (converted) Life Insurance of WW I. Appeal to this court is authorized and directed under U.S.C. 1946 ed. Title 38, Sec. 445; Title 38 U.S.C.A. Sec. 445, Act of June 7, 1924, ch. 320, Sec. 19, 43 Stat. 612; March 4, 1925, ch. 553, Sec. 2, 43 Stat. 1302. All other jurisdictional facts, such as residence of the plaintiff, issuance of the policy, death of the insured, plaintiff's status as named beneficiary, etc., are admitted in the Statement of Agreed Facts in the Pre-Trial Order (T. p. 4).

## STATEMENT OF THE CASE

The case is one of estoppel. That is to say, it is a case where the Veterans Administration, having given erroneous information to appellant's son,—on which he relied—to his detriment, ought to be estopped from reversing its position after his death. The sole question for decision is whether or not the Veterans Administration, acting within the scope of its authority in administering the National Service Life Insurance program, is to be required to abide by the fundamental principle of humanitarian justice and common sense described by Lord Coke as estoppel:

> "because a man's owne act or acceptance stoppeth or closeth up his mouth to alleage or plead the truth."

Appellant's son obtained a policy of National Service Life Insurance in the amount of $10,000.00 and paid monthly premiums thereon by allotment from his service

pay. Entering the Army from Portland, Oregon, he saw a year and a half combat service in Europe. Following his Honorable Discharge in April of 1946, he continued to make premium payments by check and money order until May 1947. At that time he wrote to the Veterans Administration asking with respect to his premium payments:

> "Let me know just where I stand." (T. p. 8, Exhibit A.)

This the government did not do. Instead of giving him the information which he requested and which was within its sole power to provide, it told him, by letter dated May 29, 1947, which is Exhibit B (T. pp. 8 and 9), in effect, three things:

1. If the premium due July 28, 1946, was not paid within thirty-one days thereafter, the insurance lapsed.
2. A credit of $25.90 existed in his account with the government.
3. This credit plus the last payment received could be applied to later premium payments to become due.

With these bits of information he, a boy of twenty-two, was left to figure it out for himself. He knew that the July 28, 1946 premium had been paid in time. It had in fact been paid early—on July 3, 1946. Payment schedule (T. p. 5). Even if the government was figuring a month behind him, his August 28, 1946 payment was paid on August 1, 1946. He knew beyond the shadow of a doubt that this particular payment was on time

and that his insurance had not lapsed. He therefore properly disregarded the application for reinstatement contained in the letter.

The next question concerned the credit. He knew that nearly a year's payments at the rate of $6.50 per month would amount to a good deal more than $25.90 and that the government had not cut him off as of July 1946 and accumulated payments since. There was a great deal of publicity about forgiveness of premiums. There was even an announcement of a refund to be made. The credit was only 10¢ less than four monthly premiums. The letter did not state how the credit arose. No doubt the insured assumed that he was benefiting from some extension, forgiveness or refund arrangement.

In any event, the letter was definite that the credit, plus the last payment, or a total of $32.40, was available to be applied to later premium payments. He was just leaving for summer work in Wyoming and would be back in Portland by mid-September, in plenty of time to make the September 28, 1947 payment. The total credit of $32.40 at the rate of $6.50 per month seemed ample to carry him until then, and perhaps the Veterans Administration, with whom he was also in contact concerning support for his schooling, would advise him by that time exactly where he stood. Accordingly, he declined his father's offer of financial help, withdrew his money from his bank account, and undertook his summer vacation work in Wyoming, without tendering any further premium payments.

He met with an untimely death by a fall from a

mountain in Wyoming on August 24, 1947. Upon application for payment of the policy, the government denied that there was any credit whatsoever in any amount, refigured the payment schedule, and announced that the payment received with the insured's last letter (T. p. 8) was the May 28, 1947 payment. This is the change of position of which appellant complains. This is the change of position which appellant believes the government ought to be estopped to assert. The position of the government taken after the insured's death, crediting his last payment to May 28, 1947 (although received on May 1, 1947), kept the policy current until June 28, 1947, which, with the thirty-one day grace period, extended its effective coverage to July 29, 1947, within less than one month from the insured's death. Actually appellant could, on the basis of the letter of credit of the government, claim an estoppel for four premium payments; but, since only one is necessary to bring the coverage of the policy one month beyond that admitted by the government, only one month has been pleaded and proved.

At the trial the government admitted all of the facts but raised two defenses, in substance:

First: That the letter of May 29, 1947 (Exhibit B, T. p. 8), although admittedly incorrect as to the credit therein stated, was insufficient on which to base an estoppel.

Second: That no estoppel could lie against the federal government.

The learned District Judge heard the case without a jury and determined the second issue in favor of the

government, ruling that no estoppel would lie. It is the contention of appellant that this court can and should reverse this ruling, proceed to determine that an estoppel will lie and has been proved by the preponderance of the evidence, and award judgment in favor of plaintiff for $10,000.00. Since the deceased during his lifetime did not elect any plan of payment, and three years have elapsed since his death, the entire sum is now due and payable.

## SPECIFICATION OF ERRORS

1. The court erred in Finding of Fact V (T. p. 11) in finding that the policy was in effect until July 29, 1947, when it should have found that it was in effect through August 24, 1947, the date of the insured's death.
2. The court erred in Conclusion of Law II (T. p. 11) in concluding that the policy lapsed for nonpayment of premiums prior to August 24, 1947, the date of the insured's death.
3. The court erred in Conclusion of Law III (T. p. 11) and should have found that the defendant was estopped.
4. The court erred in Conclusion of Law IV (T. p. 11) and should have concluded that plaintiff was entitled to judgment.

## ARGUMENT

The doctrine of estoppel is a fundamental principle of justice. Early in the history of jurisprudence it was recognized that a party could not take advantage of his own wrong if that wrong had induced his adversary to act to his detriment. The United States Supreme Court in 1869 in the case of *Swain v. Seamens*, 9 Wall. (76 U.S.) 254, 274, said:

> "Where a person tacitly encourages an act to be done, he cannot afterwards exercise his legal right in opposition to such consent, if his conduct or acts of encouragement induced the other party to change his position, so that he will be pecuniarily prejudiced by the assertion of such adversary claim."

The Swain case was one between private persons, but the same principle was later held to bind the United States. In *United States v. Peck,* 102 U.S. 64, 65 (1880), the issue was whether or not a contractor who had furnished wood for the government was entitled to set up an estoppel arising out of the actions of military officers in depriving him of the opportunity to cut hay. In holding that the government was estopped, the Supreme Court cited with approval the following sentence:

> "It is a sound principle that he who prevents a thing being done shall not avail himself of the nonperformance he has occasioned."

A recent case in which the doctrine of estoppel was applied against the federal government in a tax assessment was that of *Stockstrom, Est. v. Comm.,* U. S. Ct. of App., Dist. of Col. Circuit, March 29, 1951; Para. 72,

315 Prentice-Hall Fed. Tax Report Bulletin, issue of April 5, 1951, No. 14-77. In that case the taxpayer refrained from filing a gift tax return in 1938 on a statement of the Bureau of Internal Revenue that year and again in 1941 that certain gifts of less than $5,000.00 each were entitled to the annual exclusion. In 1948, after a change in the trend of court decisions, the Commissioner sought to claim a gift tax deficiency for the year 1938. In holding that the government was estopped the court said:

> "It has been well said that the government should always be a gentleman. Taxpayers expect, and are entitled to receive, ordinary fair play from tax officials. We regard as unconscionable the Commissioners claim. . . ."

That court quoted Justice Cardozo as follows:

> "The applicable principle is fundamental and unquestioned. He who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned, for the law says to him in effect 'this is your own act, and therefore you are not damnified'. . . . Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong. . . ."

The case of *Loveland v. United States,* 18 F. (2d) 585, reversed, *United States v. Loveland,* CCA 3rd, 25 F. (2d) 447, reversed on a confession of error, *Loveland v. United States,* 278 U.S. 665, 73 L. Ed. 571, 49 S. Ct.

184, as interpreted by the case of *Coleman v. United States,* 18 F. Supp. 71, 73, was relied upon by the trial court in disposing of the case at bar (T. p. 91). In *Loveland v. United States,* 18 F. (2d) 585, D.C. N.J. 1927, the facts were similar to the case at bar. A World War I serviceman paid for his $10,000.00 Government Life Insurance Policy by allotment until his discharge. He continued to pay the monthly premiums until July 1, 1919, when he wrote for information on conversion. Like the case at bar, his question was not answered directly, but he was given certain equivocal information and left to puzzle it out for himself. In the following month of August 1919 he again wrote, demanding to be told the amount of the monthly premium for term insurance for his age, giving his rank, discharge date, amount of insurance, numbers, etc. The government ignored this last communication, and when the serviceman died two months later on October 29, 1919, after an illness of six days, the Bureau refused payment of the policy on account of nonpayment of premiums. The District Court decreed recovery, 18 F. (2d) 585, 587, saying:

> "The only explanation offered is that the government was not entirely at ease in the early years of engaging in the eleemosynary business of writing insurance.
>
> "Fortunately there is not one standard of conduct for an individual, who engages in business, and a less reasonable standard for the government. . . . It let this officer of the United States go to his death . . . the Bureau of War Risk Insurance is by the same principle estopped."

On appeal to the Circuit Court of Appeals, the court merely held that the government could not be estopped and reversed the case. 25 F. (2d) 447. The ultimate disposition of the case does not appear of record. 278 U.S. 665, 73 L. Ed. 571, 49 S. Ct. 184.

That the decision of the Circuit Court of Appeals for the Third Circuit in *United States v. Loveland,* 25 F. (2d) 447, was not considered as a final determination even in the district courts in its own circuit is indicated by the decision of the District Court for the Eastern District of Pennsylvania in *Rodgers v. United States,* 66 F. Supp. 663, D.C. Pa. 1946. In that case action was brought by a mother on a policy of National Service Life Insurance issued to her son. At the trial the issuance of the policy and the death were proved. The government moved for a dismissal on the ground that the payment of premiums had not been proved. In denying the motion, the court cited *United States v. Loveland,* 25 F. (2d) 447, but went on to hold that the United States was subject to the same rules as a private insurance company.

> "The substantial issue raised by the instant motion, then, is whether the burden rests upon the plaintiff to establish, as part of her case, that the insurance contract was in force and effect at the time of the death of the insured. The contention of the plaintiff, of course, is that the defense, nonpayment of premiums, is an affirmative defense.
>
> "The controversy is one not new in the law of insurance, although an investigation of the cases reveals that it is entirely new where the insurer is the United States. A preliminary question, therefore, is whether the rules which have been applied

to private interests are equally pertinent where the United States is concerned.

"It may be noted that the government does not contend that a different or new rule is applicable merely because it is the United States. That the absence of such contention is in accord with the law seems plausible.

"In the case of Lynch v. United States, 1934, 292 U.S. 571 at page 579, 54 S. Ct. 840, at page 843, 78 L. Ed. 1434, the Supreme Court stated that, 'When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals' more, in the case of Standard Oil Co. v. United States, 1925, 267 U.S. 76, at page 79, 45 S. Ct. 211, at page 212, 69 L. Ed. 519, it was said that, 'When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business.' It follows, therefore, that 'the United States in this case had a proprietary status, and does not appear in its sovereignty relation.' Cushman v. United States, D.C. S.D. Cal. 1942, 43 Fed. Supp. 810, 811, appeal dismissed, 9 Cir., 131 F. 2d 1021. Thus, construction of policy provisions is not influenced by the fact that the insurer is the United States; rather, a liberal construction in favor of the insured has been given. See McClure v. United States, 9 Cir., 1936, 95 F. 2d 744, 750, affirmed, 305 U.S. 472, 59 S. Ct. 335, 83 L. Ed. 296, Cushman v. United States, supra.

"Finally, while there are other numerous factors that may enter into consideration of placing the burden of proof, 'it is merely a question of policy and fairness based on experience in different situations'. 9 Wigmore Evidence, 3rd Ed. 1940, page 275. In my opinion, there is no warrant in finding that the rules applicable to similar cases where both

> parties to the action are private parties should not be followed here merely because the insurer is the United States."

The case of *Coleman v. United States,* 18 F. Supp. 71, 73, D.C. W.D. Tenn. 1937, involved entirely different facts from those of the case at bar. In that case the veteran became insane in 1922 and died in 1928. His guardian, appointed by the state court in 1927, wrote his Congressman inquiring as to whether or not the veteran had insurance. Being advised that he did not, the guardian did nothing until 1932, when he discovered that the veteran had during his lifetime made application for insurance. Legal action was brought in 1935 under the theory that premium payments were waived on account of the veteran's disability. In deciding against the plaintiff the court ruled, inter alia: that the statute of limitations had run, that the "disagreement" prerequisite to jurisdiction did not exist, that no proper claim had been filed, that the Congressman's statement was not binding on the Veterans Administration and that plaintiff was guilty of laches. The quotation from the Loveland case and the ruling that no estoppel would lie were wholly unnecessary to the determination of the case and must be regarded as dicta. As a matter of fact, that ruling is seriously weakened by the following language in the court's opinion, 18 F. Supp. 71, 74:

> Even could the government be estopped to plead the statute of limitations against a reasonably diligent claimant by misinformation given out by its agents in the Veterans Administration (which this court does not hold), the laches of the plaintiff herein precludes his reliance on estoppel."

On appeal, the Circuit Court of Appeals, in *Coleman v. United States,* 100 F. (2d) 903, C.C.A. 6th, 1939, affirmed the case on the sole ground that the statute of limitations had run, and refused to discuss the other points raised, saying:

> "It inevitably follows that when consent to sue is given, it is no broader than the limitations which condition it . . . This being the more fundamental principle . . . it becomes unnecessary to consider other grounds. . ."

It is significant that, instead of broadly stating that no estoppel would lie against the federal government, the court said:

> "Generalizations will, however, be found to the effect that when the United States goes into the business of insurance, issues policies in familiar form, and provides that in case of disagreement it may be sued, it must be assumed to have accepted the ordinary incidents of suit in such business. Standard Oil of New Jersey v. United States, 267 U.S. 76, 45 S. Ct. 211, 69 L. Ed. 519. United States v. Worley, 281 U.S. 339, 344, 50 S. Ct. 291, 74 L. Ed. 887."

The same Circuit Court of Appeals had, only one year previous to the Coleman case, in a case not involving the federal statute of limitations, decided that the government was to be judged by the same rules as a private insurer. *Kontovich v. United States,* 99 F. (2d) 661, C.C.A. 6th, 1938, wherein the court said:

> "The War Risk Insurance Act was intended to afford the soldier the advantages of ordinary life and accident insurance, which were no longer reasonably available to him, and being substitute insurance, such government contracts are to be con-

> strued by the same rules as like contracts involving private parties, and the jurisdiction conferred on the courts to adjudicate such contracts must be exercised in accordance with the laws governing the usual procedure of the courts in actions for money compensation. Law v. United States, 266 U.S. 494, 496, 45 S. Ct. 175, 176, 69 L. Ed. 401."

It would seem to be well settled that an estoppel would be declared and recovery would be permitted were the insured's life insurance contract with a private company.

> "Where insured can establish a reasonable excuse for nonpayment of the premium based on the conduct of the company, the policy will not be regarded as forfeited." 45 C.J.S. 190, Insurance Sec. 473 (5) (b).

> "Default in payment of premium or assessment . . . as generally held, slight evidence may be sufficient to establish a waiver of forfeiture for the nonpayment of a premium." 46 C.J.S. 585, Insurance, Sec. 1361, citing *New York Life Insurance v. Miller,* C.C.A. 9th, 135 F. (2d) 550.

> "As a general rule, the policy will not be regarded as forfeited if the conduct of the insurance company affords insured a reasonable excuse for the nonpayment of the premium." 45 C.J.S. 474, Insurance, Sec. 622.

The following additional decisions apply the doctrine that the government is to be considered no different from a private insurance carrier.

*Cushman v. United States,* 43 F. Supp. 810, D.C. S.D. Cal. 1942, appeal dismissed, 9 Cir., 131 F. (2d) 1021. Action was on a policy of government insurance, and the United States moved to amend its answer to

charge fraud in obtaining the policy. It appeared that the government had accepted premiums, acknowledging the fraud and without making any effort to cancel the policy. In holding against the government, the court said:

> "The United States in this case had a proprietary status and does not appear in its sovereignty relation . . . The law imposes the duty of fair dealing upon both parties. Unfairness upon the part of either is frowned upon. The law assumes that the defendant intended to carry out the terms of the policy in return for the premiums received . . . ."

The *United States v. Cathcard,* D.C. Neb. 1946, 70 F. Supp. 653, 663, (question of disability on a WW I policy in which an estoppel by judgment was declared against the United States).

*Edmunds v. United States,* D.C. Ore. 1938, 24 F. Supp. 742. The question of whether an estoppel against the United States was possible was raised, and the court said:

> "The government by consenting to suit placed itself in the same situation as a private litigant as far as the doctrine of estoppel by judgment is concerned."

*Jadin v. United States,* D.C. Wisc., 74 F. Supp. 589, the court said:

> "While it was and is highly commendable for the government to provide national life insurance at cost to the men and women serving in the armed forces, nevertheless it was Daniel's money which paid for the premiums on the insurance policy in question. The statute authorizing national life in-

> surance should be liberally construed in favor of the insured, and to carry out his intentions."

*Zazove v. United States,* C.C.A. 7, 156 F. (2d) 24. The Veterans Administration contended that its decision on a policy was binding on the court, and denying this contention, the court said:

> ". . . . We are free to put upon said language such construction as we think would fairly carry out the generous and liberal policy of the Congress to protect and effectuate the clearly expressed intentions of the servicemen. Departmental constructions are guides, not mandates. We must always assume the responsibility for the construction of the Act, giving to it the construction which we think Congress intended, considering the language it used and the purpose it had in mind to accomplish."

*United States v. Sligh,* 31 F. (2d) 735, C.C.A. 9, 1929, cert. den. 280 U.S. 559, 50 S. Ct. 18, 74 L. Ed. 614. In that case the premiums were not paid, and it was a question as to whether or not the insured was totally and permanently disabled so as to permit waiver of premiums. The court said:

> "These policies and the statutes applicable to the same are entitled to a liberal construction in favor of the soldier."

*Edwards v. United States,* 140 F. (2d) 526 (question as to false representations of insured's good health at the time of reinstatement of the policy).

*United States v. Davis,* 128 F. (2d) 725 (a stipulation entered into by the government attorney as to the date of expiration of the policy was held binding on the government by estoppel).

*Jordan v. United States,* 36 F. (2d) 43, and *United States v. Jensen,* 36 F. (2d) 47 (estoppel not proved, but cases adjudicated on rules applicable to insurance contracts between private parties).

One author has gone so far as to say that estoppel can always be used against the government in its proprietary capacity, and sometimes against it in its governmental capacity.

> "Whether the defense of estoppel may be asserted against the United States in actions instituted by it depends upon whether such actions arise out of transactions entered into in its proprietary capacity or contract relationships, or whether the actions arise out of the exercise of its powers of government. The defense of estoppel may be (though sparingly) availed of against the United States in transactions involving its proprietary functions, provided the functions of the government are not impaired thereby." 1 A.L.R. (2d) 341.

The defendant in its brief stressed *Federal Crop Insurance Corp. v. Merrill,* 332 U.S. 380, 68 S. Ct. 1, 92 L. Ed. 10 (1947). In that case the government agent pretended to write a contract of insurance which was beyond the scope of his authority and completely unauthorized by Congress. It is to be distinguished from the case at bar in that, in the case at bar, it was within the scope of authority of the Veterans Administration to give the insured the erroneous information that it did. The Merrill case was a five to four decision, based upon the following reasoning:

> "It is too late in the day to urge that the government is just another private litigant for purposes of charging it with liability . . . ."

The dissenting opinion takes the contrary view:

> "It was early discovered that fair dealing in the insurance business required that the entire contract between the policy holder and the insurance company be embodied in the writings which passed between the parties . . . . In this case the Government entered a field which required the issuance of large numbers of insurance policies. . . . It is very well to say that those who deal with the Government should turn square corners. But there is no reason why the square corners should constitute a one-way street. I should respond . . . by laying down a federal rule that would hold these agencies to the same fundamental principles of fair dealing that have been found essential in progressive states to prevent insurance from being an investment in disappointment."

In the case of *United States v. Jones,* 176 F. (2d) 278, the War Assets Administration erroneously listed certain surplus gears as automotive, when, in fact, they were maritime. A purchaser discovered this and bought them at a small fraction of their actual value. The United States sued to recover them, but it was held that the government was estopped. Certainly this purchaser had less equity on his side than the insured in the case at bar, who had risked his own life in the service of his country and who had contributed to the government's insurance fund by regular monthly payments which were temporarily halted by the government's own action. We can see far more reason for holding an estoppel against the government and in favor of the serviceman, whom Congress and the courts generally desire to protect, than a stranger at a War Surplus sale.

A discussion of the elements of estoppel as proved in this case seems hardly necessary. The admitted schedule of payments (T. p. 5) shows a consistent record of payment. The testimony of the insured's father is unequivocal that the insured had determined to retain and convert his insurance (T. pp. 21, 24) and that he had a credit which did take care of his premium payments during the summer months (T. pp. 25, 26). The insured's stepmother, Mrs. Elizabeth McIndoe, heard the insured tell his father that he had a credit that would take care of his payments for the summer (T. pp. 40, 41). Martin Murie, who had known the insured from 1942 until the date of his death, five years later, testified that the insured intended to hold his insurance in force, discussed the advantages of keeping it up and converting it and that he had a credit at the time of his death (T. pp. 32, 33, 34, 35, 36, 37). This witness found money on the insured's body (T. p. 35) which was turned over to his father in the amount of $140.00 (T. p. 26). There was money in the insured's bank account in Portland after he received the government's letter of May 29, 1947 (T. p. 25). There was a post office at Moose, Wyoming, through which the insured could have sent his regular monthly premium payment. The insured's father offered to give the insured financial help in June of 1947 if the insured needed it, but he refused on the ground that he had a credit (T. pp. 25, 26, 40, 41). His father had previously, and in the fall of 1946, assisted him with a loan of money for his monthly premiums (T. p. 23). The insured left his terminal leave bond with his father and stepmother for the purpose of applying it, when it matured, to the

conversion of his National Service Life Insurance (T. pp. 24, 40). The testimony of Mark L. Woodbury, who was also with the insured at Reed College in Portland, Oregon, and at Moose, Wyoming, was couched in somewhat different language, but he was definite that the insured intended to convert (T. p. 51), that he had said something about a credit (T. p. 51).

Witness George W. Chaney had been employed by the Veterans Administration in Portland for five years (T. p. 61) and he admitted that the statement of a credit of $25.90 contained in Veterans Administration letter of May 29, 1947 (Exhibit B, T. p. 8), was erroneous (T. pp. 79, 80). His testimony was unequivocal to the effect that the Veterans Administration had changed its position and had refused payment of the claim for the lack of only one monthly premium (T. p. 80). As a matter of fact, his testimony shows that the government would have given the insured a better break had he been even more dilatory in making some of his previous payments. He was asked if the government could forgive three monthly premium payments, and read a technical bulletin to the effect that it could (T. p. 67). It appeared that if the insured made premium payments for three consecutive months, previous omissions could be forgiven. However, if the payment for the current month was made within the thirty-one day grace period following the current month, it had to be applied to the current month and could not be applied to the month in which it was received (T. p. 70). The situation is strange but true that if the insured had delayed sending his double payment of April 11, 1947 until April 29, 1947, his

monthly premium for March 1947 would have been waived and the government would have paid his father the policy (T. pp. 70, 81). It was at the time of the insured's next succeeding payment that he asked his government for an up to date statement of his account and received in response a letter quoting a credit, which was to be reneged on after his death.

No situation could be brought to court in which the government is less justified in attempting to hide behind the doctrine of immunity from estoppel. It is submitted that plaintiff's appeal for relief in this case is that of every citizen and ex-serviceman seeking only ordinary fair dealing between himself and his government. This standard of fair dealing is the same as that applied between private individuals generally, and if it is going to be changed in any way on account of the government being a participant, it ought to be that the government should be held to a higher standard of care in ordinary fair dealing than the individual, as between a serviceman and the government which he has served.

Respectfully submitted,

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